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December 22, 2010

The Honorable David Dewhurst
Lieutenant Governor of Texas
P.O. Box 12068
Austin, Texas 78711

The Honorable Joe Straus
Speaker, Texas House of Representatives
P.O. Box 2910
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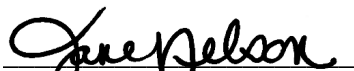
Dear Lieutenant Governor Dewhurst and Speaker Straus:

Senate Bill 643, passed by the 81st Texas Legislature, established the Interim Select Committee on Criminal Commitments of Individuals with Mental Retardation. The Committee submits this report in accordance with SB 643. This report includes an analysis of:

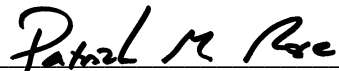
1. the existing system for criminal commitments of individuals with mental retardation or with a dual diagnosis of mental illness and mental retardation who are found incompetent to stand trial or are acquitted by reason of insanity;
2. the number of individuals with mental retardation who are criminally committed annually, and among those the number of individuals with mental retardation who are found to be violent or dangerous;
3. whether certain individuals with mental retardation who are found to be violent or dangerous should be committed to a mental retardation facility instead of to a mental health facility; and
4. the costs associated with modifying the criminal commitment process as described by Subdivision (3) of this subsection.

The Committee has carefully considered all of the testimony received on this issue to provide these recommendations and we trust that our recommendations will serve to improve the criminal commitment process for individuals with mental retardation who are found incompetent to stand trial or are acquitted by reason of insanity.

Respectfully submitted,



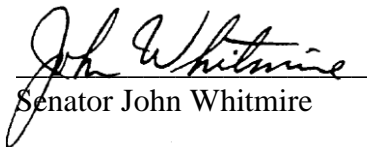
Senator Jane Nelson
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Representative Patrick Rose
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Senator Robert Duncan



Senator John Whitmire



Representative Lois Kolkhorst



Representative Pete Gallego

Background

The 81st Legislature passed SB 643 establishing the Interim Select Committee on Criminal Commitments of Individuals with Mental Retardation ("Committee") to study the criminal commitment process for individuals with mental retardation who are found incompetent to stand trial or are acquitted by reason of insanity. The Committee's study was required to include an analysis of:

- (1) the advantages and disadvantages of the existing system for criminal commitments of individuals with mental retardation or individuals with a dual diagnosis of mental illness and mental retardation who are found incompetent to stand trial or are acquitted by reason of insanity;
- (2) the number of individuals with mental retardation who are criminally committed on an annual basis and the number of individuals with mental retardation who are found to be violent or dangerous through the criminal commitment process;
- (3) whether the criminal commitment process should be modified to provide for the commitment of certain individuals with mental retardation who are found to be violent or dangerous to a mental retardation facility instead of to a mental health facility; and
- (4) the costs associated with modifying the criminal commitment process as described by Subdivision (3) of this subsection.

Of the thousands of individuals who enter Texas' criminal justice system every year,¹ fewer than 400 individuals with mental retardation (hereinafter termed "intellectual disability") or a dual diagnosis of mental illness and an intellectual disability (hereinafter termed "dual diagnosis") are criminally committed to a state hospital or state supported living center (SSLC).² Table 1 includes the number of alleged offenders criminally committed to a state hospital or SSLC from fiscal years (FYs) 2008–2010.

Table 1. Alleged Offenders Committed to a State Hospital or SSLC³

	FY 2008	FY 2009	FY 2010	Three Year Total
Alleged Offenders Committed to a State Hospital or SSLC	366	312	260	938
Intellectual Disability Only	4	2	4	10
Dual Diagnosis	362	310	256	928
Discharged from SSLC after Evaluation (Admitted in Same Year)	19	21	13	53
Community Placed (from a SSLC)	35	25	43	103

Since so few individuals with an intellectual disability or dual diagnosis end up in the criminal justice system, criminal justice and court personnel have little experience with these populations. This lack of experience can lead to (1) inadequate screening and assessment procedures and (2) long periods of incarceration between court hearings, competency evaluations, and state hospital or SSLC commitments. In addition, individuals having an intellectual disability or dual diagnosis may be committed to a SSLC for a longer period of time than if the individual had been convicted of the alleged offense and received the maximum sentence allowable by law. In light of these findings, the criminal commitment process must be evaluated to ensure that

individuals with an intellectual disability receive timely, appropriate treatment in the setting most suitable to their needs.

Analysis

Overview of Criminal Commitment Process

If a court finds an individual with an intellectual disability or dual diagnosis incompetent to stand trial or not guilty by reason of insanity, the court may criminally commit the individual to a state hospital or SSLC to receive competency restoration treatment. Under Texas law, an individual is incompetent to stand trial if the individual does not understand the proceedings against him/her or cannot participate in his/her own defense.⁴ This finding often occurs early in the criminal justice process because an individual cannot be tried unless he/she is competent to stand trial.⁵ In contrast, if a court finds an individual is not guilty by reason of insanity, a trial has occurred and the jury (or judge) has determined that the individual did not know his/her conduct was wrong at the time of the offense.⁶

This report will focus on the criminal commitment process for individuals with an intellectual disability who are found incompetent to stand trial. Figure 1 provides a general overview of this process.

Identification of Intellectual Disabilities

Under Texas law, jail personnel must notify the court within 72 hours of receiving credible information that a defendant may have an intellectual disability.⁸ If the court determines the defendant may have an intellectual disability, the court must order the local MHMR center or another qualified expert to conduct an assessment of the individual.⁹ However, due to a lack of training and experience with individuals having an intellectual disability, criminal justice and court personnel are often unable to quickly identify that an individual may have an intellectual disability. In addition, even if these professionals swiftly identify that an individual may have an intellectual disability, current assessment tools are not always effective in identifying these disabilities.

Training

Current training standards do not adequately prepare criminal justice and court personnel to recognize an intellectual disability. For example, attorneys and judges are not required to receive training in mental illness or intellectual disabilities.¹⁰ In addition, although the 79th Legislature required peace officers to complete a training program on de-escalation and crisis intervention techniques to facilitate interaction with individuals having a mental illness, no equivalent training is required for officers to recognize and interact with individuals having an intellectual disability.¹¹ Likewise, although peace officers may obtain a Mental Health Officer Proficiency certificate,¹² there is no equivalent certificate for officers to become proficient in interacting with individuals having an intellectual disability.¹³ To increase awareness among criminal justice and court personnel regarding intellectual disabilities, the Department of Aging and Disability Services (DADS) and the Department of State Health Services (DSHS) should jointly develop a reference guide for local MHMR centers to distribute to criminal justice and court personnel with whom they work. This reference guide should include information to help these professionals quickly identify and appropriately interact with individuals having an intellectual disability.

In addition, MHMR centers currently providing criminal justice and court personnel with training on mental illness should include information about intellectual disabilities in their training materials. For example, under contract with DSHS, the Heart of Texas MHMR Center coordinates with local law enforcement agencies to implement jail and detention strategies focusing on early identification of mental illness, intervention and accessing the local mental health system. While not required under contract, the Heart of Texas MHMR Center also provides these agencies with information about intellectual disabilities.¹⁴ DADS should require MHMR centers (also under contract with DADS) already offering training on mental illness to also offer training on intellectual disabilities. This training would ensure that criminal justice and court personnel quickly identify individuals having an intellectual disability and swiftly connect them to a local MHMR center through which they can access needed long term services and supports.

Competency Evaluations and Assessments

Competency evaluations and assessments may be conducted either at the time of arrest or at any time during the court process.

Assessments Conducted at Time of Arrest

At the time of arrest, criminal justice or jail personnel may determine the alleged offender appears to have an intellectual disability or a dual diagnosis and conduct an assessment to confirm this suspicion. This assessment is separate from the assessment a qualified expert conducts once a court determines a defendant may have an intellectual disability (discussed in greater detail in the next subsection). A number of disabilities advocates are concerned that the assessment instruments criminal justice and jail personnel use are not reliable because they were not developed for individuals with an intellectual disability.¹⁵ Because of this, advocates believe these assessment instruments result in underreporting intellectual disability prevalence rates in Texas. For example, while some prevalence studies estimate that individuals with an intellectual disability comprise about 10% of all detainees, TDCJ's assessment instrument estimates this number at only about 1%.¹⁶ Although developing or procuring a new assessment instrument would likely be very expensive, state agencies and disabilities advocates may be able to provide recommendations regarding other state or national best practice standards to quickly and effectively diagnosis intellectual disabilities in the criminal commitment process.

Assessments Conducted During Court Process

As mentioned previously, either party or the court may suggest that the defendant may be incompetent to stand trial.¹⁷ At this time, the court must conduct an informal inquiry to determine whether there is some evidence that the defendant may be incompetent to stand trial.¹⁸ If the court finds there is evidence to support a finding of incompetency, the court must order a formal competency evaluation to determine whether the defendant is incompetent to stand trial.¹⁹ Courts that conduct formal competency evaluations often appoint qualified experts having specialized training in mental illness and intellectual disabilities.²⁰ Although these experts are often trained to quickly identify a mental illness or intellectual disability, they are retained only *after* the individual's competency to stand trial is questioned.²¹ By this time, the individual may have been in jail for several days or weeks without access to needed services and supports.

Duration of Commitment for Individuals with Intellectual Disabilities

Generally, an individual may not be committed to a state hospital, SSLC or outpatient treatment program for a cumulative period exceeding the maximum term provided by law for the offense for which the individual was to be tried.²² However, once this maximum restoration period expires, the individual may be confined for an additional period in a state hospital or SSLC under a civil commitment.²³ If the individual allegedly committed a violent offense or brandished a deadly weapon, the court must first civilly commit the individual to Vernon for up to 60 days before transferring the individual to another state hospital or SSLC.²⁴ Once under a civil commitment, an individual with a mental illness can be committed to a state hospital for no more than 12 months²⁵ whereas an individual with an intellectual disability can be committed to a SSLC for an indeterminate period.²⁶

A number of disability advocates are concerned that individuals with an intellectual disability remain for long periods in jail, state hospitals or SSLCs between their court hearings and forensic evaluations. In some cases, an individual may remain in a SSLC longer than if he/she had been convicted of the alleged offense and received the maximum sentence allowable by law. For example, if an individual with an intellectual disability allegedly committed a minor offense and the court criminally committed the individual to a SSLC for competency restoration treatment,

the individual may remain there for 4–6 months. When the individual returns to court, the court may dismiss all charges and release the individual into the community. In this case, the individual was confined far longer than if he/she had been civilly committed to a SSLC or released.²⁷ In the absence of a maximum commitment period or any established criteria for the individual to be released into the community, individuals with an intellectual disability may remain for long periods in a SSLC under a court's commitment order. If the individual is incompetent to stand trial and unlikely to regain competency, the court should either civilly commit the individual for a determinate period or release the individual into the community.

Juvenile Criminal Commitment Process

The criminal commitment process is similar for juveniles. A court may commit a juvenile to a state hospital, SSLC or outpatient competency restoration program for up to 90 days for competency restoration treatment.²⁸ If, after the competency restoration period expires, the court determines the juvenile (1) is still "unfit to proceed" (equivalent to "incompetent to stand trial") as a result of an intellectual disability and (2) satisfies criteria for placement in a SSLC, the court will likely send the juvenile back to the SSLC to receive long term services and supports under a civil commitment order.²⁹ The court will retain jurisdiction and need not renew the commitment order until the child's 18th birthday.³⁰ Table 2 includes the number of juvenile alleged offenders criminally committed to a SSLC from fiscal years (FYs) 2008–2010.

Table 2. Juveniles Committed to a State Supported Living Center³¹

	FY 2008	FY 2009	FY 2010	Three Year Total	Total Percent
Total Juvenile Alleged Offenders Admitted to a SSLC	46	40	40	126	
Intellectual Disability Only	2	1	1	4	3.2%
Dual Diagnosis	44	39	39	122	96.8%
Discharged After Evaluation ³² (Admitted in Same Year)	16	16	10	42	33.3%
Community Placed	12	8	10	30	23.8%

Juveniles Discharged to the Community

A juvenile's placement in a SSLC (or in any institution) is considered temporary and generally, these placements cannot exceed six months without DADS executive level approval. To that end, juvenile placements are reviewed every six months to determine whether continued placement in the SSLC is warranted.³³ As a result of these reviews, a juvenile may be recommended for placement to a community setting, if appropriate.³⁴ Because the court retains jurisdiction, DADS must notify the court (usually 20 days before transfer) of the proposed community placement, giving the court an opportunity to object to the proposed transfer or otherwise indicate why the proposed transfer is not appropriate.³⁵ Typically, courts simply do not respond, in which case DADS will transfer the juvenile to a community placement.³⁶

Juveniles Not Discharged to the Community

If, on the juvenile's 18th birthday, he/she has not been discharged from the SSLC and allegedly committed a violent offense for which he/she has not yet been adjudicated, the juvenile court must transfer all pending proceedings from the juvenile court to a criminal court.³⁷ If the

juvenile court transfers the case to criminal court and the alleged offender remains incompetent to stand trial, the case will typically be pursued as illustrated in Figure 1.

The criminal commitment process for juvenile alleged offenders may result in some juveniles with an intellectual disability being committed for an indeterminate and often inordinately lengthy period. In light of this, state law should be amended to enumerate the circumstances under which a court should dismiss all charges against a juvenile committed to a SSLC and release the juvenile from the court's jurisdiction.

State Hospital Commitments for Individuals with an Intellectual Disability

Currently, if an individual is found incompetent to stand trial and is considered manifestly dangerous because he/she allegedly committed a violent offense or brandished a deadly weapon, the court must criminally commit the individual to the Vernon Campus of the North Texas State Hospital ("Vernon") for competency restoration treatment.³⁸ Vernon has a maximum security unit which includes a Multiple Disabilities Unit for individuals having an intellectual disability or dual diagnosis.³⁹ In addition, Vernon is equipped with enhanced security measures, a Dangerousness Review Board and the authority to administer medications to help treat manifestly dangerous individuals. On average, Vernon's Multiple Disabilities Unit successfully restores competency of about 75% of individuals criminally committed there.⁴⁰

Notwithstanding these security and treatment protocols, sending individuals with an intellectual disability to Vernon for competency restoration treatment raises a number of concerns, including:

- Often, these individuals must remain in jail for long periods while waiting for a state hospital bed to become available. During this time, these individuals do not have access to needed long term services and supports.
- Vernon (and state hospitals, generally) is designed to quickly stabilize individuals and return them to court or the community. However, individuals with an intellectual disability require long term services and supports.
- Individuals with an intellectual disability committed to Vernon may be preyed upon by higher functioning, dangerous residents with mental illnesses.
- Often, individuals with an intellectual disability and considered manifestly dangerous are subject to a number of placement changes, as they repeatedly transition between Vernon and jail before a court ultimately commits the individual to a SSLC. These placement changes can be very disruptive to the individual.

As mentioned previously, an individual may remain in jail for a significant period of time before a state hospital bed becomes available. Each year, courts find almost 500 individuals manifestly dangerous and commit them to Vernon for competency restoration treatment, often resulting in a backlog of individuals waiting in jails for a state hospital bed to become available.⁴¹ Although the average wait time is around 6–8 weeks,⁴² some individuals have remained in jail for *six months* before being transferred to Vernon.⁴³ See Appendix 1⁴⁴ for a detailed illustration of the criminal commitment process for individuals committed to Vernon due to a court finding them incompetent to stand trial and manifestly dangerous.

Establishing a separate maximum security unit at a SSLC would help alleviate this problem. After the 81st legislative session, DADS designated Mexia SSLC the SSLC for high risk alleged offender residents and Mexia SSLC has the requisite infrastructure, forensic training, specialized programs and services⁴⁵ and safety procedures to effectively treat this population. Notwithstanding, the U.S. Department of Justice (DOJ) monitors (discussed in greater detail later in this report) recently issued a report highlighting several positive practices and improvements at Mexia SSLC, as well as a number of ongoing concerns.⁴⁶ Once Mexia SSLC demonstrates consistent improvement in all areas the DOJ monitors evaluate, individuals with a developmental disability who are found incompetent to stand trial (including those found manifestly dangerous) should be committed to Mexia SSLC for competency restoration treatment.

Establishing a maximum security unit at Mexia SSLC would reduce the time these individuals spend in jail waiting for a state hospital bed to become available, reduce the number of placement changes they experience and ensure that these individuals receive uninterrupted competency restoration treatment and long term services and supports. Finally, DADS has the requisite experience and infrastructure to effectively treat individuals with a dual diagnosis.⁴⁷ In fact, almost 90% of individuals admitted to a SSLC are dually diagnosed. If a resident is experiencing a mental health crisis and requires additional services, DADS and DSHS will work together to meet the individual's mental health needs.⁴⁸

SSLC Annual Community Living Options Information Process

All SSLC residents—including alleged offenders committed to a SSLC—have the right to live in the least restrictive environment appropriate to the individual's needs and abilities. Generally, the process under which a SSLC resident may transition from a SSLC to a community setting is the same regardless of whether the individual is an alleged offender committed to the SSLC by a court.⁴⁹ At least annually, community MHMR centers notify all SSLC residents, their family members and/or legally authorized representatives of the resident's community living options and his/her ability to relocate to the community, if appropriate.⁵⁰ This process is termed the "Community Living Options Information Process," or "CLOIP." As mentioned previously, because the court retains jurisdiction, DADS must notify the court of the proposed community placement, giving the court an opportunity to object to the proposed transfer or otherwise indicate why the proposed transfer is not appropriate.⁵¹

Some disability advocates believe the Community Living Options Information Process is not sufficiently frequent or thorough to accurately determine whether the resident could be served in a less restrictive, more integrated setting whereas others believe it may not be stringent enough to keep violent or dangerous individuals—including alleged offenders committed to a SSLC—out of the community. Currently, DADS is subject to a settlement agreement between Texas and the U.S. Department of Justice (DOJ). The settlement agreement requires monitors jointly selected by Texas and the DOJ to periodically evaluate each SSLC's compliance with the settlement agreement terms. In accordance with these periodic evaluations, the DOJ is reviewing each SSLC's annual Community Living Options Information Process to ensure that evaluations are sufficiently frequent and thorough and that the SSLCs are providing services in the most integrated setting appropriate to residents' needs, and to make recommendations to improve this process. For additional information about the DOJ settlement agreement, see the Senate Committee on Health and Human Services Interim Report to the 82nd Legislature, Charge 14B.

When determining whether a resident (including an alleged offender committed to a SSLC) can be served in a less restrictive, more integrated environment, DADS considers a number of factors, including whether the individual may be a danger to others.⁵² In addition, the 81st Legislature required DADS to evaluate all residents considered to be high risk alleged offenders (often individuals criminally committed to a SSLC) within 30 days of admission and at least annually thereafter to determine whether the resident is at risk of harming someone else and should remain classified as high risk.⁵³

Alternatives to Criminal Commitment

Texas and a number of other states have implemented conditional release or community treatment programs to assist individuals with intellectual disabilities regain competency and successfully reintegrate into the community.

Conditional Release Programs

Similar to probation, a conditional release program aims to prevent and reduce re-offenses, particularly for individuals found incompetent to stand trial and unlikely to regain competency, or not guilty by reason of insanity. Program participants must agree to follow a treatment contract designed by the provider or outpatient supervisor and approved by the court. Violating the contract terms may result in revocation of outpatient status and re-hospitalization.

Outpatient Competency Restoration Programs

DSHS operates four outpatient competency restoration (OCR) pilot programs which provide community based competency restoration services to individuals with a mental illness, including mental health/substance abuse treatment and legal education.⁵⁴ As of June 2010, almost 400 individuals participating in these programs were successfully restored to competency without any violent recidivism.⁵⁵ Although a court may commit an individual with an intellectual disability to an OCR program, these OCR programs are targeted to individuals having a mental illness and the mental health system currently lacks the required resources and expertise to treat individuals with a primary diagnosis of an intellectual disability.⁵⁶ To effectively expand OCR programs to treat individuals with an intellectual disability, DADS could partner with local MHMR centers to develop an OCR program targeting individuals with intellectual disabilities or dual diagnoses.⁵⁷ If an individual's competency is not restored through the OCR program, the MHMR center could work with DADS to immediately place the individual in a SSLC. Unlike traditional OCR programs that offer short term services to help individuals quickly reintegrate into the community, this OCR program would need to be tailored to individuals requiring long term services and supports.

OCR program supporters laud these programs as being less costly than a state hospital and less stressful for the individual. In addition, OCR programs offer a better continuity of care than the current system in which individual often wait for weeks or months in jail before being transferred to a state hospital or SSLC to begin receiving needed services.

Conclusion

The criminal commitment process for individuals having an intellectual disability or dual diagnosis should be modified to ensure that these individuals are quickly identified and receive both timely and appropriate treatments and services in the setting most appropriate to their needs.

Recommendations

- 1. Designate Mexia State Supported Living Center (SSLC) as the maximum security unit for individuals with an intellectual disability or dual diagnosis who are found "manifestly dangerous" and incompetent to stand trial, and commit these individuals to Mexia SSLC for competency restoration.**
- 2. Direct courts finding an individual incompetent to stand trial and not likely to regain competency to either civilly commit the individual for a determinate period or release the individual into the community.**
- 3. Direct the Department of Aging and Disability Services to require MHMR centers currently providing training on mental illness to law enforcement, criminal justice, and court personnel to also offer training on intellectual disabilities and include information about intellectual disabilities in their training materials.**
- 4. Direct the Department of Aging and Disability Services and the Department of State Health Services to jointly develop a reference guide for local MHMR centers to distribute to criminal justice and court personnel to help them quickly identify and appropriately interact with individuals having an intellectual disability.**
- 5. Amend state law to enumerate the circumstances under which a court should dismiss all charges against a juvenile committed to a state supported living center and release the juvenile from the court's jurisdiction.**

¹ Overview of Texas' Correctional System. Statistics indicate that there are about 79,000 individuals in jail system and 171,000 in the prison system. Last accessed November 18, 2010. Available at: <http://nicic.gov/features/statestats/?State=TX>.

² Information provided by DADS and DSHS via email dated October 25, 2010 and November 2, 2010. Email detailed the number of individuals with intellectual disabilities that have been criminally committed to state hospitals and SSLCs in fiscal years (FYs) 2008-2010.

³ Information provided by DADS via email dated October 29, 2010. Information provided by DSHS via email dated November 29, 2010.

⁴ Texas Code of Criminal Procedure, Art. 46B.003(a).

⁵ Kevin Keating, Harris County District Attorney, testimony to the Interim Select Committee on Criminal Commitments on November 2, 2009. Fort Worth, TX. A defendant is presumed competent to stand trial and shall be found competent to stand trial unless proved incompetent by a preponderance of the evidence. *See* Texas Code of Criminal Procedure, Art. 46B.003(b). An intellectual disability does not prevent an individual from being competent to stand trial. Sometimes, education about the court process can help an individual found incompetent to stand trial understand the proceedings and participate in his/her defense.

⁶ Texas Code of Criminal Procedure, Art. 46C.151. *See also*: Kevin Keating, Harris County District Attorney, testimony to the Interim Select Committee on Criminal Commitments on November 2, 2009. Fort Worth, TX.

⁷ Texas Code of Criminal Procedure, Chapter 46B: Incompetency to Stand Trial.

⁸ *Id.* at Art. 16.22(a)(1).

⁹ *Id.*

¹⁰ *See* Court of Criminal Appeals Judicial and Court Personnel Training Program, Rules of Judicial Education, Effective September 1, 2005. Available online at <http://www.courts.state.tx.us/oca/judicialeducation.asp> (Last accessed November 29, 2010).

¹¹ SB 1473 (Lindsay/Coleman) required peace officers to complete statewide Crisis Intervention Training (CIT), a program that developed to provide law enforcement officers with a basic understanding of how to use communication skills to de-escalate situations that involve individuals with mental illness, in order to limit the use of force. In January 2005, the Texas Commission on Law Enforcement Officer Standards and Education included CIT as part of its basic peace officer course curriculum. However, this training did not apply to officers certified prior to that date.

¹² *See* Texas Commission on Law Enforcement Officer Standards and Education Rules Handbook, p. 42. Available online at www.tcleose.state.tx.us/publications/publications_gen/rules_handbook.pdf (Last accessed November 26, 2010).

¹³ Information provided by DADS via email dated July 9, 2010.

¹⁴ Heart of Texas Mental Health and Mental Retardation Center Presentation to the Interim Select Committee on Criminal Commitments of Individuals with Mental Retardation, November 2, 2009, p. 2 (hereinafter termed "Heart of Texas MHMR Center presentation").

¹⁵ Information provided by Angela Lello, Public Policy Director, Texas Council for Developmental Disabilities, via email dated November 29, 2010. *See also* ARC of Texas Presentation to Interim Select Committee on Criminal Commitments of Individuals with Mental Retardation, November 2, 2009, p. 3.

¹⁶ *Id.*

¹⁷ Texas Code of Criminal Procedure Art. 46B.004(a).

¹⁸ *Id.* at Art. 46B.004(c).

¹⁹ *Id.* at Art. 46B.005(a).

²⁰ *Id.* at Art. 46B.021(e).

²¹ *Id.* at Art. 46B.005.

²² *Id.* at Art. 46B.0095(a).

²³ *Id.* at (b).

²⁴ *Id.* at Art. 46B.104.

²⁵ *Id.* at Art. 46B.102. *See also* Texas Health and Safety Code §§574.034(g), 574.035(h).

²⁶ *See* Texas Code of Criminal Procedure, Art. 46B.102–103. *See also* the Department of State Health Services presentation to the Interim Select Committee on Criminal Commitments of Individuals with Mental Retardation, November 2, 2009, slide 7. Individuals committed to a State Supported Living Center may be released from the court's jurisdiction and transfer to a community placement in accordance with the Community Living Options Information Process discussed in greater detail later in this report.

²⁷ Chris Lopez, Department of State Health Services Attorney, testimony to the Interim Select Committee on Criminal Commitments of Individuals with Mental Retardation, November 2, 2009, Fort Worth, TX.

²⁸ Texas Family Code §55.33(a).

²⁹ *Id.* at §55.41.

³⁰ *Id.* at §55.44.

³¹ Information provided by DADS via email dated October 29, 2010.

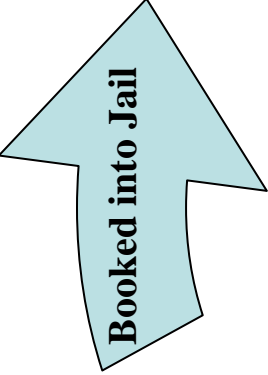
³² Among other reasons, a juvenile may be discharged after the evaluation due to DADS determining the juvenile does not having a diagnosis of an intellectual disability or the juvenile is fit to proceed to trial.

³³ This process is termed the "permanency planning process." *See* "Permanency Planning for Children," Texas Department of Aging and Disability Services. Available online at <http://www.dads.state.tx.us/providers/pi/permanency/> (Last accessed November 29, 2010). *See also* SB 368 (77R; Zaffirini et al./Maxey, Naishtat).

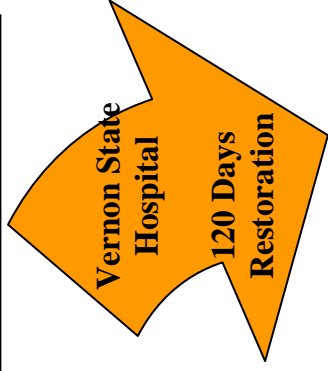
³⁴ Department of Aging and Disability Services Presentation to the Interim Select Committee on Criminal Commitments of Individuals with Mental Retardation, November 2, 2009, slide 15 (hereinafter termed "DADS presentation"). Available online at http://www.dads.state.tx.us/news_info/presentations/criminal-commitments-11-2-09.pdf (last accessed November 29, 2010).

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- ³⁵ Information provided by DADS via telephone November 29, 2010.
- ³⁶ *Id.*
- ³⁷ *Id.*
- ³⁸ Texas Code of Criminal Procedure, Art. 46B.073(b).
- ³⁹ Department of State Health Services Overview of Forensic Programs at North Texas State Hospital, Presented to the Interim Select Committee on Criminal Commitments of Individuals with Mental Retardation, November 2, 2009, slides 10–12.
- ⁴⁰ Information provided by DSHS via email dated June 8, 2010.
- ⁴¹ Information provided by DADS via email on October 25, 2010.
- ⁴² Information provided by DSHS via email on October 20, 2009.
- ⁴³ Heart of Texas MHMR Center presentation, p.4.
- ⁴⁴ Source: Beth Mitchell, Advocacy, Inc.
- ⁴⁵ See DADS presentation, slides 18–19.
- ⁴⁶ See United States v. State of Texas Monitoring Team Report, Mexia State Supported Living Center, November 8, 2010. Available online at <http://www.dads.state.tx.us/monitors/reports/mexia-11-8-10.pdf> (last accessed November 29, 2010).
- ⁴⁷ DADS presentation, slide 17.
- ⁴⁸ *Id.* This may require transferring the individual to a state hospital for short term stabilization, then returning the individual to the state supported living center, once stabilized.
- ⁴⁹ Information provided by DADS via email dated October 29, 2010.
- ⁵⁰ Information provided by DADS via email dated October 25, 2010. For individuals under age 22, this educational process is termed the Permanency Planning process.
- ⁵¹ Information provided by DADS via telephone November 29, 2010. Typically, courts simply do not respond, in which case DADS will transfer the individual to a community placement.
- ⁵² Information provided by DADS via email dated October 25, 2010.
- ⁵³ Senate Bill 643 (81R; Nelson/Rose).
- ⁵⁴ Information provided by DSHS via email dated June 8, 2010.
- ⁵⁵ *Id.*
- ⁵⁶ *Id.*
- ⁵⁷ *Id.*

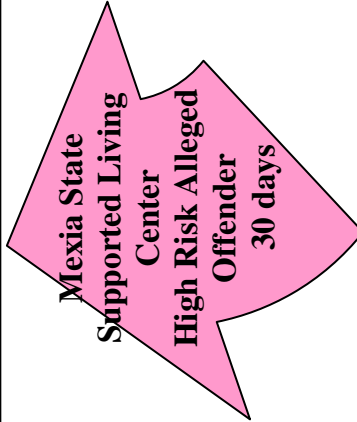
Facilities continue to pursue restoring **D** to competency
 Facility notifies committing court when:
D no longer meets **commitment criteria** or is **competent**
 Court determines if **release is appropriate**, or
 Sent **back to jail** to resume criminal trial



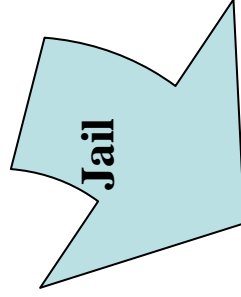
Court Orders **examination** [46B.005]
Report due in 30 days [46B.025, .026]
Competency hearing [46B.005(c),.051]
 Initial Court **Determination of Incompetency** [46B.051 -.055]
Commit D to Vernon State Hospital Maximum-Security Unit (MSU) for up to 120 days for the purpose of restoring **D** to competency [46B.071, .072, .073]



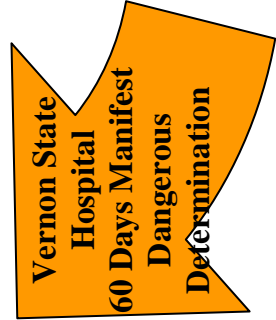
HIGH-RISK ALLEGED OFFENDER determination made 30th day after alleged offender first committed to Mexia, & annually thereafter. **H & S 555.003**
Not High Risk transferred to State Supported Living Center
HIGH-RISK ALLEGED OFFENDER A risk of inflicting substantial physical harm to another.



Head of Facility sends Notice to court when:
D has attained competency -46B.079(b)(1)
D won't attain competency in foreseeable future -46B.079(b)(2)
 Regardless After 105 days [46B.079(a)]



Unless determined to be **manifestly dangerous** by **review board**, w/in 60 days **D** is transferred to **Mexia Supported Living Center** under provisions of PMRA [46B.105(a)(2)]
Manifest Dangerous likely to endanger others and requires a maximum security environment in order to continue treatment and protect public safety 25 TAC §415.303(14)



D's current competency heard within 20 days of receiving report [46B.084(a)]
Hearing may be by electronic broadcast system [46B.084(b-1); 46B.013]
 If **no objection** court can determine competency **without a hearing** [46B.084(a)]
Criminal court conducts commitment hearing pursuant to **(Persons with Mental Retardation Act)** [46B.103(b)]
D is committed **initially** to (MSU) [46B.104]